H4

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted in

FILE: [redacted] Office: Panama Date: AUG 25 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii) and Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act, 8 U.S.C § 1182(i)

ON BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The Form I-212 application was denied and the Form I-601 application was rejected by the Officer in Charge, Panama City, Panama, and is now before the Administrative Appeals Office on appeal. The appeal of the Form I-212 application will be sustained.

The applicant is a native and citizen of Colombia who attempted to procure admission into the United States on March 16, 2000, by presenting a photo-switched Colombian passport in another person's name. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)(i). The applicant was removed from the United States on March 16, 2000, under the provisions of section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

The applicant alleges that he is married to a U.S. citizen and has a U.S. citizen child. That assertion is unsupported in the present record; however, the record contains a U.S. Embassy checklist that indicates that he submitted the necessary documents to apply for an immigrant visa as the spouse of a U.S. citizen. The AAO will, therefore, consider the applicant's statements to be true. The consular officer refused the applicant an immigrant visa under section 212(a)(6)(C) of the Act. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The officer in charge determined that the applicant had not shown that his U.S. citizen wife would suffer extreme hardship and denied the application for permission to reapply.

The AAO notes that although the officer in charge denied the application for permission to reapply and then properly rejected the application for waiver of inadmissibility, the analysis that led to the decision to deny the application for permission to reapply was more appropriate to a decision on the waiver application in that it only examined extreme hardship and did not balance all negative and positive factors.

On appeal, the applicant's wife states that she is the mother of two children and is acting as their sole support and guardian. She states that she sends the applicant money every month to help him make ends meet. The applicant's wife then discusses country conditions in Colombia and states that the children need a father.

Section 212(a)(9)(A) of the Act provides, in part, that:

> (i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case

[redacted]

of an alien convicted of an aggravated felony) is inadmissible.

(ii) Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 of the Act or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The Service has held that an application for permission to reapply for admission to the United States may be approved when the applicant establishes he or she has equities within the United States or there are other favorable factors that offset the fact of deportation or removal at Government expense and any other adverse factors that may exist. Circumstances which are considered by the Service include, but are not limited to: the basis for removal; the recency of removal; the length of residence in the United States; the moral character of the applicant; the alien's respect for law and order; the evidence of reformation and rehabilitation; the existence of family responsibilities within the United States; any inadmissibility to the United States under other sections of the law; the hardship involved to the alien and to others; and the need for the applicant's services in the United States. *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973). An approval in this proceeding requires the applicant to establish that the favorable aspects outweigh the unfavorable ones.

It is appropriate to examine the basis of a removal as well as an applicant's general compliance with immigration and other laws. Evidence of serious disregard for law is viewed as an adverse factor. Family ties in the United States are an important consideration in deciding whether a favorable exercise of discretion is warranted. *Matter of Acosta*, 14 I&N Dec. 361 (D.D. 1973).

The favorable factors in this matter are the applicant's family ties, the absence of a criminal record, the need for the applicant's presence to care for two minor children, the approved visa petition, and the prospect of general hardship to the family.

[redacted]

The unfavorable factors in this matter include the applicant's attempt to gain admission by fraud, and his being removed from the United States.

Although the applicant's actions in this matter cannot be condoned, the applicant has now established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has now established that a favorable exercise of the Attorney General's discretion is warranted. Accordingly, the appeal will be sustained. The applicant must still, however, be granted a waiver of inadmissibility in separate proceedings.

ORDER: The appeal is sustained. The decision of the officer in charge is withdrawn, and the application for permission to reapply for admission is approved.